

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
IO-13 ACDA-12 /091 W
-----043730 191645Z /43

R 191602Z MAY 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 8699
INFO AMEMBASSY BERLIN
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AMEMBASSY COPENHAGEN
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USEEC ALSO FOR EMBASSY

E.O. 11652: N/A
TAGS: PGOV, PINT, EEC, GW
SUBJECT: NEW FRG LAW ON ELECTIONS FOR THE EUROPEAN
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PARLIAMENT: COMPROMISE AND CONFLICT

REF: (A) BONN 4139 (NOTAL); (B) 77 BONN 2503 (NOTAL);
(C) USBERLIN 1159 (NOTAL)

SUMMARY. THE LAW GOVERNING THE FIRST DIRECT ELECTION
OF FRG AND BERLIN MEMBERS TO THE EUROPEAN PARLIAMENT

HAS PASSED BOTH HOUSES OF THE BONN PARLIAMENT AND WILL SOON ENTER INTO FORCE. THIS LAW REPRESENTS A COMPROMISE BETWEEN CONFLICTING AND SHARPLY POLITICIZED VIEWS WITHIN THE FRG. IT PROVIDES THAT 78 DEPUTIES WILL BE ELECTED TO THE EUROPEAN PARLIAMENT ON THE BASIS OF PROPORTIONAL REPRESENTATION; THREE OTHER DEPUTIES WILL BE CHOSEN BY THE BERLIN HOUSE OF REPRESENTATIVES. THE LAW PERMITS POLITICAL PARTIES TO RUN EITHER DE FACTO NATIONAL LISTS OF CANDIDATES (WHICH THE GOVERNMENT PARTIES, SPD AND FDP, WANTED) OR STATE (LAND) LISTS (WHICH THE OPPOSITION CDU/CSU WANTED). THIS COMPROMISE GIVES THE JUNIOR COALITION PARTNER (FDP) A GREATER CHANCE TO ELECT ITS MOST QUALIFIED CANDIDATES, REGARDLESS OF WHICH LAND THEY REPRESENT; HOWEVER, IT NEITHER REDUCES NOR INCREASES THE DANGER THAT THE FDP MIGHT FALL BELOW THE FIVE-PERCENT THRESHOLD IN CERTAIN STATES, WITH ALL THE POLITICAL FALLOUT THAT WOULD ENSUE.

AT THE SAME TIME, THE COMPROMISE ENABLES FRANZ JOSEF STRAUSS' CSU TO RUN CANDIDATES ON A STATE LIST IN BAVARIA, WHILE RETAINING THE OPTION TO RUN CSU CANDIDATES IN OTHER STATES. THIS DOUBLE-EDGED COMPROMISE HAS THUS ENABLED THE CSU TO RESUME TALK OF A "FOURTH PARTY" IN THE 1979 CAMPAIGN FOR THE EUROPEAN PARLIAMENT, A SABER WHICH STRAUSS HAS RECENTLY BEEN LOUDLY RATTLING TO THE DISMAY OF OTHER FRG PARTIES. THIS CABLE FOCUSES ON THE LEGISLATIVE HISTORY AND PROVLIMITED OFFICIAL USE

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SIONS OF THE NEW FRG LAW. END SUMMARY.

BACKGROUND PROVISIONS FOR ALL EC MEMBERS

1. THE SEPTEMBER 20, 1976 DECISION AND ACT BY THE EC COUNCIL OF MINISTERS PROVIDED FOR THE UNIVERSAL AND DIRECT ELECTION OF DEPUTIES TO THE EUROPEAN PARLIAMENT. IN ADDITION, SOME BASIC RULES WERE LAID DOWN:

-- THE EUROPEAN PARLIAMENT WILL CONSIST OF 410 DEPUTIES, INCLUDING 81 MEMBERS FROM THE FEDERAL REPUBLIC OF GERMANY (THE BERLIN REPRESENTATIVES ARE TO BE

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COUNTED AGAINST THIS BLOC OF 81);

-- DEPUTIES WILL BE ELECTED FOR FIVE YEARS;
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- DEPUTIES WILL NOT BE BOUND BY ORDERS AND INSTRUCTIONS--E.G., FROM THEIR NATIONAL GOVERNMENTS OR FROM POLITICAL PARTIES;

-- MEMBERSHIP IN THE EUROPEAN PARLIAMENT WILL BE COMPATIBLE WITH MEMBERSHIP IN NATIONAL PARLIAMENTS,

IN ORDER TO SECURE THE BEST POSSIBLE COOPERATION
BETWEEN THE EUROPEAN PARLIAMENT AND THE NATIONAL
PARLIAMENTS;

-- MEMBERS OF NATIONAL GOVERNMENTS AND CERTAIN HIGH-
RANKING OFFICIALS OF THE EUROPEAN COMMUNITY CANNOT
CONCURRENTLY BE MEMBERS OF THE EUROPEAN PARLIAMENT.
ADDITIONAL INCOMPATIBILITIES MAY BE LAID DOWN BY
NATIONAL LEGISLATION.

-- ELECTORAL LAWS FOR THE FIRST EUROPEAN ELECTION
(JUNE 1979) WILL BE PASSED BY NATIONAL PARLIAMENTS.
THE ELECTORAL LAW FOR SUBSEQUENT EUROPEAN ELECTIONS
WILL BE MADE BY THE EUROPEAN PARLIAMENT.

SPECIFIC FRG LEGISLATION

2. WITHIN THE FRG CONTEXT, IMPLEMENTATION OF THESE
STEPS ENTAILS THREE SEPARATE LAWS.

A. THE FIRST MEASURE (EUOPARATIFIZIERUNGSGESETZ),
PROVIDING FOR RATIFICATION OF THE ACT AND THE DECISION,
RAISED NO CONTROVERSY. IT UNANIMOUSLY PASSED THE
BUNDESTAG (LOWER HOUSE) AND THE BUNDESRAT (UPPER HOUSE)
IN JUNE 1977. IT WAS PUBLISHED IN THE FEDERAL GAZETTE
ON AUGUST 11, 1977, AND ENTERED INTO FORCE THE NEXT
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DAY.

B. THE SECOND MEASURE (EUOPAWAHLGESETZ), CON-
CERNING THE MECHANISM FOR ELECTING FRG AND BERLIN
MEMBERS TO THE EUROPEAN PARLIAMENT, HAS RECENTLY PASSED
BOTH CHAMBERS AND NOW AWAITS SIGNATURE BY THE PRESIDENT.
GAZETTING WILL FOLLOW SOON THEREAFTER.

C. THE THIRD MEASURE (EUOPAABGEORDNETENGESETZ),
CONCERNING THE LEGAL STATUS OF FRG AND BERLIN DEPUTIES
TO BE ELECTED, IS STILL IN COMMITTEE AND WILL PROBABLY
BE PASSED BEFORE THE SUMMER BREAK (SEE PARA 11 BELOW).

3. DEBATE ON THE EUOPAWAHLGESETZ LED TO SOME DISPUTE
BETWEEN THE TWO BONN COALITION PARTIES, THE SOCIAL
DEMOCRATS (SPD) AND THE FREE DEMOCRATS (FDP), AND THE
TWO OPPOSITION PARTIES, THE CHRISTIAN DEMOCRATS (CDU)
AND THE CHRISTIAN SOCIALISTS (CSU), WHICH FORM THE
UNION. INEVITABLY, DOMESTIC POLITICAL TACTICS PLAYED
A MAJOR ROLE. THE BILL UNDERWENT CONSIDERABLE REVISION
BEFORE THE BUNDESTAG UNANIMOUSLY ADOPTED IT ON MARCH 16,
1978.

4. ORIGINALLY, THE FEDERAL GOVERNMENT AND ITS COALITION PARTIES (SPD/FDP) PROPOSED A CENTRALIZED SYSTEM UNDER WHICH EACH PARTY WOULD PUT UP A SINGLE NATIONAL LIST OF CANDIDATES. THE SPD APPEARS TO HAVE CONSISTENTLY PREFERRED THIS APPROACH. THE FDP BACKED THE NATIONAL LIST OUT OF A PREFERENCE FOR THE CENTRALIZED APPROACH, AND AS THE BEST WAY TO ELECT ITS TOP CANDIDATES. THE FINAL VERSION OF THE LAW NEITHER INCREASES NOR REDUCES THE FDP'S POTENTIAL PROBLEMS WITH THE FIVE-PERCENT CLAUSE. TO BE SURE, GAINING LESS THAN FIVE PERCENT IN ANY LAND WOULD NOT KEEP THE FDP OUT OF THE EUROPEAN PARLIAMENT, SO LONG AS IT WON MORE THAN FIVE PERCENT NATIONALLY. HOWEVER, FALLING SHORT IN A LAND LIMITED OFFICIAL USE

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WOULD HAVE MAJOR IMPLICATIONS FOR THE FDP, AND COULD STRENGTHEN THOSE FDP CIRCLES WHICH FAVOR SWITCHING COALITION PARTNERS IN BONN.

5. BY CONTRAST, THE OPPOSITION CDU/CSU ORIGINALLY PROPOSED "MAJORITY" DIRECT VOTING IN LIEU OF PROPORTIONAL REPRESENTATION, A SYSTEM WHICH WOULD HAVE ELIMINATED THE FDP FROM THE EUROPEAN PARLIAMENT. THE CDU/CSU SOON ABANDONED THIS IDEA IN FAVOR OF SEPARATE PARTY LISTS FOR EACH LAND, WITH THE POSSIBILITY TO COMBINE LAND LISTS--I.E., THE "SECOND-VOTE" SYSTEM USED IN BUNDESTAG ELECTIONS. THE SPD/FDP PROPOSAL WOULD HAVE FORCED THE

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R 191602Z MAY 78

FM AMEMBASSY BONN

TO SECSTATE WASHDC 8701
INFO AMEMBASSY BERLIN
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CDU/CSU TO SUBMIT EITHER A SINGLE LIST OR SEPARATE
NATIONAL LISTS, A CHOICE WHICH THE TWO PARTIES WANTED
TO AVOID IN VIEW OF THEIR HISTORIC BUT DELICATE DIVI-
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SION OF LABOR, WHEREBY THE CSU CAMPAIGNS ONLY IN BAVARIA
AND THE CDU ONLY IN THE REST OF THE FEDERAL REPUBLIC.

6. THERE WERE OTHER MOTIVES FOR THE UNION POSITION.
APART FROM A TRADITIONAL PENCHANT FOR A FEDERAL
APPROACH, THE CDU/CSU PLANS TO MAKE THE EC DIRECT
ELECTIONS A "DRY-RUN" NATIONAL CONTEST PRIOR TO THE
1980 BUNDESTAG ELECTION, IN AN EFFORT TO PUT EXTRA
PRESSURE ON THE FDP TO SWITCH ITS ALLIANCE IN BONN.
IN ADDITION, CSU LEADER FRANZ JOSEF STRAUSS, THE MAIN
UNION BACKER OF SEPARATE STATE LISTS, WANTED TO KEEP
THE OPTION OF RUNNING THE CSU NATIONWIDE--I.E., THE
"FOURTH PARTY" THREAT WHICH CSU CIRCLES HAVE PERIODI-
CALLY MADE SINCE THE CDU/CSU TRUCE WHICH ENDED THEIR
KREUTH DISPUTE AFTER THE 1976 BUNDESTAG ELECTION.
FOR DIFFERENT REASONS, ALL OTHER PARTIES IN THE FRG,
ESPECIALLY THE CDU, GENERALLY OPPOSE THE "FOURTH PARTY"
IDEA (SEE PARA 12 BELOW).

7. AFTER LONG DEBATE, THE BUNDESTAG REACHED A COMPROMISE WHICH ALLOWS EACH PARTY TO PLACE ITS CANDIDATES EITHER ON SEPARATE LAND LISTS OR A COMMON LIST FOR ALL LAENDER (IN EFFECT, A NATIONAL LIST). IN ADDITION, PARTIES MAY PLACE SPECIFIC CANDIDATES ON TWO OR MORE LAND LISTS. THIS PROVISION SEEKS TO GIVE THE SMALLER LAENDER, SUCH AS BREMEN AND THE SAARLAND, A BETTER CHANCE TO HAVE THEIR REPRESENTATIVES ENTER THE EUROPEAN PARLIAMENT. THERE ARE NO DIRECT MANDATES. FRG CANDIDATES WILL ENTER THE EUROPEAN PARLIAMENT ONLY ON THE BASIS OF (A) THE PROPORTIONAL NUMBER OF TOTAL VOTES WHICH THEIR LIST RECEIVES, AND (B) THEIR POSITION ON THAT LIST.

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8. ANOTHER CONTROVERSIAL ISSUE WAS THE QUESTION AS TO WHETHER OR NOT MEMBERSHIP IN A LAND GOVERNMENT IS COMPATIBLE WITH MEMBERSHIP IN THE EUROPEAN PARLIAMENT. THE BUNDESTAG FINALLY AGREED THAT IT IS NOT, FOLLOWING A RULE WHICH ALSO APPLIES TO BUNDESTAG DEPUTIES. AN IMMEDIATE IMPLICATION OF THIS PROVISION IS THAT STRAUSS, WHO EXPECTS TO BECOME MINISTER-PRESIDENT OF BAVARIA IN OCTOBER, CANNOT CONCURRENTLY BECOME A MEMBER OF THE EUROPEAN PARLIAMENT. THE LAW ALSO ESTABLISHES ADDITIONAL INCOMPATIBILITIES (E.G., PARLIAMENTARY STATE SECRETARY).

9. OTHER BASIC PROVISIONS OF THIS LAW WERE UNDISPUTED, AND GENERALLY FOLLOW PROVISIONS OF FRG ELECTORAL LAW. THEY INCLUDE:

-- THE FIVE-PERCENT CLAUSE, WHEREBY EACH PARTY MUST WIN AT LEAST FIVE PERCENT OF THE VALID VOTE CAST IN ORDER TO GAIN A SHARE OF THE 78 SEATS. THIS FIGURE IS DETERMINED ON A NATIONAL, NOT A STATE, BASIS.

-- THREE BERLIN REPRESENTATIVES TO THE EUROPEAN PARLIAMENT WILL BE SELECTED BY THE BERLIN HOUSE OF REPRESENTATIVES, A PROCEDURE WHICH CORRESPONDS TO THE WAY BY WHICH BERLIN DEPUTIES TO THE BUNDESTAG ARE CHOSEN (REF C). UNLIKE BERLIN DEPUTIES ELECTED TO THE BUNDESTAG, HOWEVER, BERLIN DEPUTIES TO THE EUROPEAN PARLIAMENT WILL HAVE FULL VOTING RIGHTS (AS THEY DO IN THE CURRENT EUROPEAN PARLIAMENT).

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R 191602Z MAY 78
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-- COMPENSATION OF ELECTION EXPENSES AT A RATE OF
DM 3.50 PER VOTE RECEIVED. THE FEDERAL GOVERNMENT
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WILL PAY THIS MONEY TO ALL PARTIES WHICH GAIN AT
LEAST 0.5 PERCENT OF THE TOTAL VALID VOTES.

10. FOLLOWING BUNDESTAG PASSAGE, THE BUNDESRAT ADOPTED
THIS BILL WITHOUT CHANGE ON APRIL 21, 1978. DURING
UPPER HOUSE DELIBERATIONS, THE SAARLAND TRIED TO HAVE
THE MEASURE REFERRED TO THE JOINT CONFERENCE COMMITTEE,
IN AN EFFORT TO ACHIEVE BETTER REPRESENTATION OF THE
SMALLER LAENDER IN THE BLOC OF 81 DEPUTIES. THIS MOVE
FAILED, BECAUSE ONLY BAVARIA AND RHINELAND-PALATINATE
SUPPORTED IT. IN THE FINAL TALLY, THE SAARLAND WAS THE
ONLY LAND WHICH VOTED AGAINST THIS LEGISLATION.

11. THE THIRD BILL, CONCERNING THE LEGAL STATUS OF
FRG AND BERLIN MEMBERS OF THE EUROPEAN PARLIAMENT, IS
STILL BEFORE THE BUNDESTAG COMMITTEES. WE EXPECT
PASSAGE BY JUNE. THIS BILL WILL PROBABLY FOLLOW BASIC
PROVISIONS OF PRESENT ELECTORAL LAW AND THE CONSTITU-
TION. FOR EXAMPLE, IT WILL PROVIDE THAT DEPUTIES ARE
NOT BOUND BY ORDERS AND INSTRUCTIONS, AND ARE SUBJECT
ONLY TO THEIR CONSCIENCE. IT WILL ALSO INCLUDE RULES
ON INDEMNITY AND IMMUNITY, THE RIGHT TO REFUSE TO GIVE
EVIDENCE, FREE TRANSPORTATION, AND PRIVILEGES DURING
THE EUROPEAN PARLIAMENT ELECTION CAMPAIGN. OTHER
REGULATIONS, ON MATTERS SUCH AS SALARY AND ALLOWANCES,
WILL PROBABLY BE LEFT TO SUBSEQUENT LEGISLATION BY THE
EUROPEAN PARLIAMENT.

RENEWED "FOURTH PARTY" DISCUSSION

12. THE SPD AND THE FDP HAVE ALREADY ANNOUNCED THEIR
INTENTION TO USE "COMMON LAND LISTS" FOR THE DIRECT
ELECTIONS TO THE EUROPEAN PARLIAMENT. THE QUESTION IS
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WHAT THE UNION WILL DO. THE CDU WOULD CLEARLY PREFER
TO USE THE DIVISION OF LABOR USED IN PAST BUNDESTAG
ELECTIONS. THE CSU HAS NOT COMMITTED ITSELF. TO THE
CONTRARY: SHORTLY AFTER THE EUROPAAHLGESETZ PASSED
THE BUNDESTAG AND BUNDESRAT, SOME CSU CIRCLES RESUMED
PUBLIC ADVOCACY OF THE "FOURTH PARTY" APPROACH, ARGUING
THAT THE EC DIRECT ELECTIONS NEXT JUNE WOULD BE AN
IDEAL TEST RUN. GIVEN THE HISTORY OF THE KREUTH DIS-
PUTE AND THE STATE OF CDU/CSU RELATIONS, THIS SUBJECT
INEVITABLY AROUSES NEURALGIC REACTIONS IN BOTH
UNION PARTIES. IT ALSO POSES STRATEGIC AND TACTICAL
DILEMMAS FOR THE SPD AND THE FDP. AT PRESENT, IT
APPEARS THAT THE CDU AND THE CSU WILL TRY NOT TO RE-
OPEN THIS QUESTION UNTIL AFTER THEY REVIEW THE RESULTS
OF THE FOUR 1978 LAND ELECTIONS, AND POSSIBLY THE

THREE LAND ELECTIONS NEXT SPRING (BERLIN, RHINELAND-PALATINATE, SCHLESWIG-HOLSTEIN).

13. LATER MESSAGES WILL DISCUSS BROADER IMPLICATIONS OF THE "FOURTH PARTY" ISSUE.
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